

LOCAL

The little-known story of why Narragansett can charge you admission at Town Beach

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NARRAGANSETT — One summer Sunday in 1991, dozens of protesters streamed onto Narragansett Town Beach, breezing past the guards who asked them to pay the \$4 admission fee.

Planting a homemade flag that identified them as RI CRABS, Rhode Islanders for Constitutional Right of Access to Beach and Shore, they sat on the sand and waited for police to arrest them.

In the group's view, Narragansett's insistence on charging a fee to walk on the beach violated the Rhode Island Constitution, which guarantees the right to access the shore. Their eccentric ringleader, James Cavanaugh, had been refusing to pay for years in hopes that he'd have the opportunity to challenge the policy in court. To his frustration, town officials had repeatedly declined to pursue charges against him.

More: Is this wealthy RI town using parking tickets to limit the public's access to the beach?

When officers showed up at Town Beach and began handing out trespassing citations to the protesters, Cavanaugh finally got his chance for a legal showdown. But the outcome was the opposite of what he'd wanted: After six years of delays, Judge Frank J. Williams ruled in favor of the town.

"It's a typical Rhode Island decision," Cavanaugh said afterward. "In fact, only in Rhode Island does the Constitution, in plain old-fashioned English ... mean something else."

Decades later, countless Rhode Islanders have found themselves idly wondering how Narragansett gets away with what seems to be a violation of one of the state's most cherished principles.

Unlike any other publicly owned beach in Rhode Island, Narragansett Town Beach makes you pay just to get onto the sand between Memorial Day and Labor Day. Beachgoers who show up and hand over \$15 for parking are routinely shocked when they're asked to pay another \$12 at the gate.

The explanation can be found in the largely forgotten legal battle that took place in the 1990s and led to a permanent rift between Cavanaugh and Williams, who had both helped to rewrite Rhode Island's Constitution and fundamentally disagreed about how to interpret it.

It's a fight that few of today's beach access activists have any interest in reviving. These days, the existence of the admission fee is less of a concern than the fact that the price keeps getting higher and higher — and runs the risk of driving away less-affluent families.

Beach was originally designed as moneymaker for Narragansett

Like so many other things in Rhode Island, the story of the state's most popular beach begins with the Hurricane of 1938.

The storm tore through Narragansett, destroying many of the beach pavilions that had become a draw for tourists. Fearing that those visitors wouldn't return the following summer, the town took over a prime stretch of oceanfront property and built its own municipal beach facilities.

From its early days, Narragansett Town Beach charged admission. Having borrowed the equivalent of \$5.8 million in today's dollars to buy the land and build a clubhouse and new pavilions, the town "set up the Beach Commission, which ran the property like a business," The Providence Journal would recall decades later.

Before the storm, private hotels and bathhouses had lined the coast, but a right-of-way known as "Beach Row" allowed the public to get to the shore. That changed in 1939 as Narragansett looked for a way to pay off its debts.

The town first fenced off the right-of-way, then passed an ordinance that made it illegal to walk onto the beach in a bathing suit. A police officer was stationed by the gate at Beach Row to enforce the rule — which appears to have been aimed at getting people to pay to use the changing facilities. (Wearing street clothes over a swimsuit and disrobing once on the beach was also banned.)

Later that year, the Town Council voted to formally abandon Beach Row. Along with another right-of-way at Canonchet Road, it eventually vanished from the map. Getting onto the beach would require walking through one of the official entrances — and past the ticket-collectors.

Retired veteran's challenge to beach fee dismissed as 'baloney'

For decades, no one seemed to question Narragansett's right to charge admission at the beach. Then James Cavanaugh started showing up with his own personal copy of the Rhode Island Constitution and refusing to pay.

A veteran of the Korean War and the Vietnam War, Cavanaugh had just retired from the Air Force and returned home to Rhode Island in the 1970s when an employee of the private Dunes Club tried to stop him from walking across the beach. That confrontation set him off on a decades-long quest to defend the public's right to access the shoreline.

"You know, we lose more damn freedoms in little town halls every day than we ever lost in all the wars this country ever fought," he would later say.

Cavanaugh, who died in 2012, briefly held the distinction of being the only person who didn't have to pay to go to Narragansett Town Beach. Officials had decided that letting him in for free would be easier than debating whether the fees were legal.

"I didn't want a confrontation with my people," Parks and Recreation Director Ralph S. Coppa told *The Journal* in 1989, noting that Cavanaugh had been running for a seat on the School Committee when he began his protest. "It was a set-up job — waving that leaflet of his. It was an election year."

Cavanaugh "has tested us and given us all kinds of baloney," Town Manager Vincent T. Izzo added.

The unofficial arrangement lasted for about two summers, to Cavanaugh's great frustration. Finally, in 1989, council members learned that he'd been getting special treatment and demanded that it come to an end.

Barely a week later, Cavanaugh showed up in a turn-of-the-century bathing costume, carrying a fishing pole and sack of seaweed. He walked right onto the sand, and promptly collected a trespassing summons. But prosecutors soon dropped the charges

"This is the first time I've won a case that I'm disappointed," Keven A. McKenna, the provocative lawyer who had volunteered to represent Cavanaugh, told The Journal.

Changes to Constitution were intended to expand shoreline rights

Both Cavanaugh and McKenna were familiar with what Rhode Island's Constitution says about shoreline access: They'd helped to write the document.

Just a few years earlier, McKenna had been chairman of the 1986 Constitutional Convention. Cavanaugh had served as a delegate. So had Superior Court Judge Frank J. Williams, who had made his own bid to be the convention's chair, and would eventually side with the Town of Narragansett.

At the convention, Cavanaugh and McKenna co-sponsored an amendment that redefined what it meant for the public to have a right to the shore. Previously, language from 1843 had stated that "the people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore" — hearkening back to the state's colonial charter, and an era when the main issue was being able to rely on the ocean for sustenance.

The 1986 wording, written at a time when people were more likely to see the beach as a place of leisure, clarified that "privileges of the shore" includes the right to passage along the shore and "leaving the shore to swim in the sea."

To Cavanaugh and McKenna, that meant that the public also had a right to get to the shoreline in the first place — an idea that lawyers like to call "perpendicular access."

There's little debate that Rhode Island's Constitution guarantees what's considered "lateral access," which is why you can't be arrested for walking along a members-only beach or in front of a private waterfront home as long as you stay below the mean high tide line.

But Cavanaugh argued that the constitutional amendment was also intended to provide the right of free, unobstructed access to the shore from the land — otherwise, the right to "shoreline access" carried little meaning.

"We did not intend to have the people parachute in," he would tell The Journal in 1996.

Judge 'lost a friend' after rejecting CRABS' claims

Williams, who would go on to become the chief justice of the Rhode Island Supreme Court, disagreed. The issue had landed on his desk in 1991 after the RI CRABS activists were charged with failing to pay Narragansett's beach admission fee, and responded by filing a class-action lawsuit against the town. (At his arraignment, Cavanaugh had carried a squeaky plastic crab.)

The new language in Rhode Island's Constitution "provides absolutely no indication that a right of perpendicular access across the property of others exists," Williams wrote in his 1997 decision. Moreover, he argued, its framers hadn't intended to create that right.

Cavanaugh, of course, was one of those framers and had battled for the amendment that expanded shoreline privileges. But Williams said that his review of transcripts from the convention showed no evidence that other committee members had intended to enshrine a right to perpendicular access.

In fact, there had been hardly any discussion of the topic at all.

"If I had found that the committee had addressed the issue of perpendicular access, I would have dealt with that and let the chips fall where they may," Williams told The Journal in a recent interview.

Instead, he recalls, "I lost a friend over that decision."

In Williams' recounting, he and Cavanaugh sat near each other during the constitutional convention and formed a friendship. But after the ruling, Cavanaugh never spoke to the judge again. (A 2006 profile in the South County Independent noted that Cavanaugh "encourages almost everyone he meets" to visit www.frankwilliamsucks.com.)

"I would have been glad to have a beer with him," said Williams, now retired from the bench and working as a mediator. (Recently, Williams helped to broker what opponents call a "secret backroom deal" that would have cleared the way for the expansion of Champlin's Marina & Resort on Block Island.)

To his recollection, no one else gave him a hard time about his decision to side with the Town of Narragansett. But Cavanaugh's rejection continues to sting.

"It hurts. It still hurts."

Lawyers see little chance of overturning ruling today

After getting the decision, Cavanaugh wanted to keep fighting. But the deadline to appeal to the state Supreme Court passed while he was hospitalized by a heart attack and ended up undergoing bypass surgery. He later announced plans to publish a point-by-point rebuttal on a website instead.

Since then, no one has attempted to take the issue to a higher court. One reason is that advocates for beach access tend to lack the money, time and resources required for a lengthy legal battle.

But there's also a very strong likelihood that the ruling "probably would be upheld and then become statewide precedent" if it went to the state Supreme Court, said Michael Rubin, a member of the legislature's shoreline access commission who handled coastal access issues while heading the environmental division in the Rhode Island Attorney General's office.

"The fear for advocates is always that you get a bad decision," said Sean Lyness, a faculty fellow at New England Law Boston and the author of a forthcoming law review article on shoreline access and the 1986 Constitution. The issue of perpendicular access is "always going to be thorny," he notes, because it inevitably raises questions about the rights of private property owners.

New Jersey's coastal access laws are fairly similar to Rhode Island's, Lyness added. There, the Supreme Court ruled that the public has the right to perpendicular access but beach owners also have the right to charge reasonable fees.

Brian Wagner, a Narragansett resident and lawyer who has done pro bono work to defend public access on behalf of the Surfrider Foundation, added that members of the public don't have the right to walk across people's private property in order to get to the high-tide line. It's not clear that a court would see municipal property any differently, he said.

"Would I love to see the beaches free and clear and and public to everyone, as they are in places like Oregon? Absolutely," Wagner said. "That would be awesome. But Oregon developed later and went down a different track than we did here in the Northeast with all our colonial charters."

Focus has shifted to fighting fee increases

To this day, some Rhode Islanders still refuse to pay to go to Narragansett Town Beach out of principle.

But the fee — which has tripled in the years since Cavanaugh was first arrested — hasn't hurt the beach's popularity. In 2019, Narragansett Town Beach received a larger share of visitors than any other beach in the state, according to cellphone data analyzed by the Narragansett Bay Estuary Program.

Those visitors come from all over the state, a frequent source of tension. "Feel cheated that we DO NOT HAVE A 'TOWN' Beach. All for the tourists and buses, trolleys, etc.," one resident wrote in response to a 2017 survey sent out by the town. Another complained that Narragansett Town Beach was "getting like Scarborough."

Some residents have urged the town to expand the hours when wristbands are required for entry — currently, you can walk onto the beach for free if you arrive before 8:30 a.m. or after 5 p.m. Others have suggested that Narragansett should double its fees to reduce crowding, or limit the number of RIPTA buses that drop passengers off at the beach.

As a result, for today's beach-access activists, the goal isn't to get Narragansett to stop charging admission altogether. It's to make sure that the fees remain affordable for the average Rhode Islander.

Providing lifeguards and bathrooms and keeping the beach clean isn't cheap, advocates recognize. But they see raising fees beyond what's strictly necessary as a way to limit the number of visitors from less wealthy (and less white) parts of Rhode Island.

"The beach makes plenty of money," says Conrad Ferla, a local surfer who offered lessons at Narragansett Town Beach for years and helps run a Facebook group called Saving RI Coastal Access/Rights Of Way that has more than 3,000 members. "Why do we keep raising the rates, other than to exclude?"

When you hand over \$12 in exchange for a colorful wristband at Narragansett Town Beach, that money goes into the town's Beach Enterprise Fund. In fiscal year 2020, revenue topped \$2.6 million, and the fund had a \$4.8-million balance.

While the beach also makes money from parking and facility rentals, more than a third of the revenue came from daily admissions — \$1,061,083 in total, according to Narragansett Finance Director Christine Spagnoli.

The fund is used to cover the day-to-day costs of running the beach, and pay for any improvements. In fiscal year 2020, expenses including staff salaries, maintenance and the cost of depreciation came to slightly over \$2 million, financial documents show. The beach came away with a surplus of \$582,659.

Some money in the enterprise fund is set aside to ensure that the town is prepared for the next big hurricane. More controversially, more than \$1 million has been budgeted for the renovation of residents-only cabanas that have a 10- to 15-year waiting list and have been likened to "a private beach club on public land."

Meanwhile, last October, Narragansett's Town Council voted to raise the beach entrance fee from \$10 to \$15 per person, while also doubling the daily weekday parking rate.

Ferla, who lives in Wakefield, was among the South County residents who loudly voiced opposition. A new Town Council that was sworn in this January ultimately reduced the entry fee to \$12 and backed away from the plan to raise parking fees.

"If these fees go up, they are never going to come back down," council member Jesse Pugh, who had opposed the increase, told the Independent. "To find out what this beach will end up being, go to Connecticut or the Hamptons. It's going to basically be a private beach."

Still possible to get onto the beach for free

Activists are quick to point out that there are ways to get onto Narragansett Town Beach without paying the fee — at your own risk.

One time-honored (if potentially dangerous) tradition is jumping off the seawall so that you land in the ocean, below the mean high tide line. But "people aren't going to do that with their family," Ferla acknowledges. "It's just crazy surfers."

Another is to paddle in on a surfboard or kayak, typically from the Narrow River.

If anyone tries to stop you from pulling up on the shore, "you could put down your paddle and say, 'Are you the Coast Guard? Do you wish to board this vessel?'" suggests Scott Keeley, who famously was arrested while collecting seaweed on a Charlestown beach. "Maybe offer to show them your flotation devices."

Narragansett's Parks and Recreation Department naturally doesn't endorse some of the alternative methods that people use to get onto the beach.

"Jumping the seawall is a very dangerous situation and not something we like to see due to concerns of safety," Director Michelle Kershaw wrote in an email. If someone jumps the wall and then lingers on the beach, they'll be asked to pay the admission fee, Kershaw said. If they refuse, they'll be asked to leave.

However, "if someone jumps into the water and stays in the water, we will not chase them and will let the matter go."

After he failed to get the beach-entry fee struck down in court, Cavanaugh became a proponent of jumping from the seawall. He would later shift his energy to fighting a plan to build dozens of luxury condominiums in Narragansett's Pier Village, but not before getting himself arrested at the beach a final time.

During the summer of 1998, Cavanaugh set up a sandwich board along the seawall and began "directing people's attention" to the fact that they could get onto the beach for free if they hopped over.

Beach employees soon showed up to warn people that they would be ejected if they followed his advice, he told The Journal.

The next day, Cavanaugh hopped the sea wall himself, then informed a ticket collector that a crime might have occurred. In reality, the 65-year-old had landed below the mean high-tide line, but he wanted to see if Narragansett would challenge his constitutional right to passage along the shore.

It was a battle that the town had no interest in fighting.

Declaring that Narragansett had "wasted enough time and resources on this issue," Town Solicitor Mark McSally dropped the charges a few weeks later. He also announced that he planned to buy Cavanaugh a beach pass.

According to The Journal's report, Cavanaugh "suggested, in a manner of speaking, that McSally keep it."